

Issue: Responsible Corp. Officer - Failure to File or Pay Tax

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS) Docket #
) IBT #
v.)
) NPL #
)
) Karl W. Betz
) Administrative Law Judge
Taxpayer)
)

The Department entered into evidence its file in this matter (Department Group Exhibit 1, admitted at Tr. 8) under the certification of the Director of Revenue.

Taxpayer entered into evidence its Exhibits 1 through 9 (Tr. 8) and these included several copies of cancelled checks and 556 transaction returns (Taxpayer Nos. 1 and 2), corporate and individual income tax returns (Taxpayer Nos. 4-6) and articles of incorporation. (Taxpayer No.7).

Taxpayer testified that although he was an officer who owned one-half of the stock, he was primarily the salesman while the other owner/officer, one XXXXX, was responsible for filing and paying the tax returns. Taxpayer testified that while he had check signing authority, the occasions he signed checks were infrequent.

XXXXX referred to Taxpayer Exhibits No. 1 and 2 that contain copies of cancelled corporate checks and 556 returns. XXXXX also testified that while he occasionally signed RR-556 transaction returns and monthly Retailers' Occupation Tax returns, he was not responsible for filing them with the Department. (Tr. 17-19).

XXXXX, Certified Public Accountant, testified he prepared tax returns for the business known as XXXXX, first as a partnership and then after its incorporation. XXXXX testified that when he prepared tax returns for XXXXX at its business location, he worked with XXXXX and did not work with XXXXX.

After carefully considering the record, I recommend the matter be resolved in favor of the Taxpayer.

FINDINGS OF FACT

1. XXXXX was Secretary/Treasurer of XXXXX Inc., from its incorporation in February, 1987 to the time it ceased operations in 1989. (Dept. No. 1; Taxpayer No. 7).

2. Taxpayer signed the monthly corporate sales tax returns for May, June and July, 1989. These returns show a zero balance due. (Dept. No. 1, 58-60).

3. There is insufficient evidence in the record to establish that the conduct of Taxpayer constituted a voluntary, conscious and intentional

failure to pay the NPL tax liability. (Dept. No. 1).

CONCLUSIONS OF LAW Under Section 13.5 of the Retailers' Occupation Tax Act, during the assessment periods, an officer or employee of a corporation who had the control, supervision or responsibility for filing and paying sales tax returns and ". . .who willfully fails to file such return or makes such payment to the Department or willfully attempts in any other manner to evade or defeat the tax, shall be personally liable for a penalty equal to the total amount of tax unpaid by the corporation, including interest and penalties thereon. . . ." (35 ILCS 120/13.5).

A requirement to uphold liability under Section 13.5 on an individual alleged by the Department to be a responsible officer or employee is a showing of willfulness. Rosetta Griffith v. Department of Revenue, Illinois Appellate Court, First Division (Number 1-92-2518, September 19, 1994).

After reviewing the record, including the testimony and documentary evidence, I conclude there is not sufficient evidence to show the requisite willfulness necessary to support a conclusion of liability against Taxpayer. XXXXX testified he was not responsible for preparing, filing and paying the tax returns. In addition to his testimony about his lack of responsibility for filing and paying tax returns, Taxpayer has tendered several documents. Taxpayer submitted 596 cancelled corporate checks paid to Government agencies (Taxpayer No. 1) and only 9 of these are signed by XXXXX. Of 132 RR-556 Transaction Reporting Returns submitted (Taxpayer No. 2), only 7 are signed by XXXXX.

While the possibility exists for missing checks or 556s, Taxpayer's testimony was corroborated by Certified Public Accountant XXXXX, who testified credibly that XXXXX was not responsible for filing tax returns and that he, XXXXX, worked with XXXXX in the preparation of returns.

In summary, based upon the evidence in this record, I conclude

Taxpayer is not a responsible corporate officer of XXXXX, Inc. under Section 13.5 of the Retailers' Occupation Tax Act.

RECOMMENDATION Based upon the aforementioned findings of fact and conclusions of law, I recommend the Department cancel Notice of Penalty Liability No. XXXXX and return any monies paid by XXXXX on it.

Karl W. Betz
Administrative Law Judge